

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER MORTS,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

CASE NO. C20-1500-JCC

ORDER

This matter comes before the Court on the parties' stipulated protective order (Dkt. No. 15). Finding good cause, the Court enters the following stipulation:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with Local Civil Rule 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

Under this Protective Order, the term Confidential Material may include the following documents and tangible things produced or otherwise exchanged by the parties: (a) medical records and health information; (b) financial information and proprietary documents not in the public domain or subject to public disclosure; (c) employee personnel or supervisory files, non-party employee information; (d); and (e) any other information not in the public domain that is reasonably and in good faith believed by the producing party to contain proprietary, private or highly-sensitive information.

Notwithstanding any other provision in this Protective Order, the Order shall not apply to information that is publicly available. Confidential Information shall be used and disclosed only in the above-captioned case. No person afforded access to Confidential Information shall use or disclose Confidential Material for the purpose of business or competition or for any purpose other than this litigation.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential

1 material must be stored and maintained by a receiving party at a location and in a secure manner
2 that ensures that access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the designating party, a receiving party may
5 disclose any confidential material only to:

6 (a) the receiving party’s counsel of record in this action, as well as employees
7 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

8 (b) a party, the officers, directors, human resources employees, and in house
9 counsel of the receiving party to whom disclosure is reasonably necessary for this litigation, and
10 who are bound to this protective Order, unless the parties agree that a particular document or
11 material produced is for Attorney’s Eyes Only and is so designated;

12 (c) experts and consultants to whom disclosure is reasonably necessary for
13 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
14 (Exhibit A), which includes each such person’s clerical and support staff;

15 (d) the court, court personnel, and court reporters and their staff;

16 (e) copy or imaging services retained by counsel to assist in the duplication of
17 confidential material, provided that counsel for the party retaining the copy or imaging service
18 instructs the service not to disclose any confidential material to third parties and to immediately
19 return all originals and copies of any confidential material;

20 (f) during their depositions, witnesses in the action to whom disclosure is
21 reasonably necessary, or potential witnesses identified in discovery who have signed the
22 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
23 designating party or ordered by the court;

24 (g) the author or recipient of a document containing the information or a
25 custodian;
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1 (h) the videographer who videotapes Confidential Information at a deposition
2 in this litigation;

3 (i) any mediator in this litigation, and employees and personnel of said
4 mediator;

5 (j) any other individuals agreed to in writing by the designating party.

6 4.3 Filing Confidential Material. Before filing confidential material or discussing or
7 referencing such material in court filings, the filing party shall confer with the designating party,
8 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
9 remove the confidential designation, whether the document can be redacted, or whether a motion
10 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
11 designating party must identify the basis for sealing the specific confidential information at issue,
12 and the filing party shall include this basis in its motion to seal, along with any objection to
13 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
14 followed and the standards that will be applied when a party seeks permission from the court to
15 file material under seal. A party who seeks to maintain the confidentiality of its information must
16 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
17 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,
18 in accordance with the strong presumption of public access to the Court's files.

19 **5. DESIGNATING PROTECTED MATERIAL**

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
21 or non-party that designates information or items for protection under this agreement must take
22 care to limit any such designation to specific material that qualifies under the appropriate
23 standards. The designating party must designate for protection only those parts of material,
24 documents, items, or oral or written communications that qualify, so that other portions of the
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1 material, documents, items, or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
5 unnecessarily encumber or delay the case development process or to impose unnecessary
6 expenses and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated
8 for protection do not qualify for protection, the designating party must promptly notify all other
9 parties that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 agreement, or as otherwise stipulated or ordered, disclosure or discovery material that qualifies
12 for protection under this agreement must be clearly so designated before or when the material is
13 disclosed or produced.

14 (a) Information in documentary form (e.g., paper or electronic documents and
15 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
16 proceedings): the designating party must affix the word "CONFIDENTIAL" to each page that
17 contains confidential material.

18 (b) Testimony given in deposition or in other pretrial or trial proceedings: the
19 parties must identify on the record, during the deposition, hearing, or other proceeding, all
20 protected testimony, without prejudice to their right to so designate other testimony after
21 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
22 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential. If a
23 party or non-party desires to protect confidential information at trial, the issue should be
24 addressed during the pre-trial conference.

25 (c) Other tangible items: the producing party must affix in a prominent place
26 on the exterior of the container or containers in which the information or item is stored the word

1 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
2 the producing party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the designating party’s
5 right to secure protection under this agreement for such material. Upon timely correction of a
6 designation, the receiving party must make reasonable efforts to ensure that the material is
7 treated in accordance with the provisions of this agreement.

8 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 6.1 Timing of Challenges. Any party may challenge a designation of confidentiality
10 at any time. Unless a prompt challenge to a designating party’s confidentiality designation is
11 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
12 significant disruption or delay of the litigation, a party does not waive its right to challenge a
13 confidentiality designation by electing not to mount a challenge promptly after the original
14 designation is disclosed.

15 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
16 regarding confidential designations without court involvement. Any motion regarding
17 confidential designations or for a protective order must include a certification, in the motion or in
18 a declaration or affidavit, that the movant has engaged in a good faith effort to meet and confer
19 with other affected parties in an effort to resolve the dispute without court action. The
20 certification must list the date, manner, and participants to the conference. A good faith effort to
21 confer requires a face-to-face meeting or a telephone conference.

22 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
23 intervention, the designating party may file and serve a motion to retain confidentiality under
24 Local Civil Rule 7. The burden of persuasion in any such motion shall be on the designating
25 party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose
26 unnecessary expenses and burdens on other parties) may expose the challenging party to

1 sanctions. All parties shall continue to maintain the material in question as confidential until the
2 court rules on the challenge.

3 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
4 **OTHER LITIGATION.**

5 If a party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
7 party must:

8 (a) promptly notify the designating party in writing and include a copy of the
9 subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to
11 issue in the other litigation that some or all of the material covered by the subpoena or order is
12 subject to this agreement. Such notification shall include a copy of this agreement; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued
14 by the designating party whose confidential material may be affected.

15 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
17 material to any person or in any circumstance not authorized under this agreement, the receiving
18 party must immediately (a) notify in writing the designating party of the unauthorized
19 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
20 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
21 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
22 Agreement to Be Bound” that is attached hereto as Exhibit A.
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1 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-discovery
7 order or agreement that provides for production without prior privilege review. The parties
8 agree to the entry of a non-waiver order under Federal Rule of Evidence 502(d) as set forth
9 herein.

10 **10. NONTERMINATION AND RETURN OF DOCUMENTS**

11 Within 60 days after the termination of this action, including all appeals, each receiving
12 party must return all confidential material to the producing party, including all copies, extracts
13 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
14 destruction.

15 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
16 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
17 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
18 work product as part of the client file, which either party may maintain for up to six years as
19 recommended by the WSBA *Guide to Best Practices for Client File Retention and Management*,
20 even if such materials contain confidential material. While counsel may retain Confidential
21 material in compliance with the WSBA's *Guide to Best Practices for Client File Retention and*
22 *Management*, counsel may not disclose any Confidential material in any way that would violate
23 this Confidentiality Agreement.

24 The confidentiality obligations imposed by this agreement shall remain in effect until a
25 designating party agrees otherwise in writing or a court orders otherwise.
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1 Pursuant to stipulation, it is so ORDERED. It is further ORDERED that pursuant to
2 Federal Rule of Evidence 502(d), the production of any documents in this proceeding shall not,
3 for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver
4 by the producing party of any privilege applicable to those documents, including the attorney-
5 client privilege, attorney work-product protection, or any other privilege or protection recognized
6 by law.

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8 DATED this 30th day of March 2021.

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12 John C. Coughenour
13 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on _____
in the case of *Jennifer Morts v. Microsoft Corporation*, Cause No. 2:20-cv-01500-JCC. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____